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EXAMINER				
REICHEL, KARIN M				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

OfficeAction25944@oliff.com
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Office Action Summary

Application No.

10/538,786

Applicant(s)

SUZUKI ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendments to the specification filed 7-30-09 are accepted in light of Applicant's clarification filed 12-17-09.

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

Drawings

2. The drawings were received on 7-30-09. These drawings are not approved. For example, the sheet with new Figure 16B is also not a replacement sheet, but rather a new sheet and should have been properly identified "New Sheet". As noted in the 11-20-09 Office communication due to proposed cancellation, the views are no longer numbered consecutively. Note MPEP 608.02, i.e. 37 CFR 1.84(u), with respect numbering of views. Figure 15(B) as proposed still does not denote, e.g., the space and use such denotation in the textual description and/or is such Figure described as being in a particular state, e.g. worn or unworn or both, e.g. on pages 11-15, see also discussion *infra*, e.g. paragraphs 3-4 and 6.

3. Therefore the drawings are still objected to because Figures 30A-B should be labeled as "Prior Art". Also, descriptive text, e.g. "DISCHARGED LIQUID", should be avoided in the Figures. The Figures are not consistent with the description thereof as now amended, e.g. on pages 11-15. See also discussion *infra*, e.g. paragraphs 4 and 6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. Therefore the drawings are still objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 26 and 38, and thereby claims 27-29 and 39 which depend therefrom, see also discussion *infra*, esp. paragraph 6 *infra* and paragraphs 2-3 *supra*, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

5. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: the amendment to paragraph 17, line 8, line 1 thereof is missing a number, page 2, fifth line from the bottom, the amendment to page 4, line 1, last two lines, page 20, second full paragraph,

line 1 thereof, page 25, last full paragraph, and page 43, line 4. It is also noted that the reference to the inventors on pages 29, 31 and 42 should also be avoided.

6. The disclosure is objected to because of the following informalities: The description is replete with informalities. For example: 1) The Summary of the Invention section, i.e. a description of the invention of the claims, and the claims are still not commensurate, e.g. where is the invention of page 4, section 1 set forth in the claims? 2) The description of the Figures, e.g., on pages 11-15, page 43, first full paragraph, page 45, second full paragraph should be consistent with the Figures, e.g. where are Figures 7F-G, 11A-B and 14 described? 3) In the amended paragraph at page 4, line 1, the last line appears to be inaccurate, i.e. "absorber" should be --absorbent product--. 4) The description of the invention throughout the application is, at the very least, unclear/inconsistent (note the discussion in, e.g., paragraphs 7 and 9-10 infra also). For example, where is a detailed description of Figures 7F and G now set forth? For another example, note page 18, first full paragraph, first sentence refers to the product having two absorbers but in the last sentence the product only refers to a/one absorber 14. This also applies to the description on page 24, last paragraph. For a third example, claim 8, as well as page 28, lines 14-17, claims a guide sheet with "the flow passage" (emphasis added). See also claim 1, lines 13-16. Yet on page 28, line 17-page 31, line 9, a guide sheet and "its flow passage" or "flow passages of the guide sheet" is described. Note also the description at, e.g., page 16, lines 18-21. Therefore it is unclear from such descriptions of the guide sheet whether the flow passage(s) of such guide sheet and the flow passage of the absorbent product are one and the same or not, e.g. the flow passage(s) of the guide sheet are not one and the same but communicate with the claimed passage. Note esp. the description of the passage in claim 1, line

14, "to flow off from the surface sheet". For a final example, the description of the various sheets in claims 26, 38, 27 and 39 and, e.g., page 45, first full paragraph, Figures 15A-B, 18A-18C, page 48, line 3-page 52, line 3 of the application are also unclear/inconsistent, e.g. Figure 15B shows a surface sheet, but does not show such between the main body and housing as claimed. Note also discussion of Figure 15B in, e.g., paragraph 2 supra. A clear consistent description throughout the application should be set forth. The entire description should be carefully reviewed and revised, as necessary. Applicant is thanked in advance for his/her cooperation in placing the description in proper form.

Appropriate correction is required.

7. The amendment filed 1-2-09 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The amendments which are not supported by the original disclosure is as follows: the amendments to pages 12, 26, 27, 28, 34, 35 and 39.

Applicant is required to cancel the new matter in the reply to this Office Action.

Where is the invention, i.e. a description of the same scope, e.g. the description of portions 20/absorbent product of Figures 7F-G, the combinations of the relationships of 6A-6F and 7F-G, as originally filed, still described? Note again MPEP 2163.02, second to last paragraph.

Claim Objections

8. Claims 27 and 38-39 are objected to because of the following informalities: In claim 38, the second to last line still appears to include too many words, i.e. “in” should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. Claims 8-10, 23, 25, 27, 29, 36-37 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 8, the description of “the flow passage” therein, e.g. on the upper surface of the surface sheet, and that of the flow passage in on lines 13-16 of claim 1 appear to be unclear/inconsistent. See also the discussion in paragraph 6, 4) supra. In regard to claim 25, is the unit in claim 22 and at least one of the plurality of units in claim 25 one and the same, i.e. at a minimum how many units are being claimed? This also applies to claim 29.

10. Claims 1-6 and 8-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See discussion in paragraph 7 supra and esp. MPEP 2163.02 cited therein

Claim Language Interpretation

11. With regard to claim 1 and thereby the claims which depend therefrom, claim 1 is interpreted to require an absorbent product structured as claimed on lines 1-7 and 9-12, “discharged liquid” being liquid discharged on the surface sheet, a flow passage which functions with regard to “the discharged liquid” as claimed on lines 13-16 and the position of the surface sheet and absorber which functions with regard to “the discharged liquid” as claimed on the last three lines. It is noted, however, that “the discharged liquid” is not required to be/include all liquid discharged to the product. With regard to claims 2, 6 and 30-31, see discussion in, e.g., paragraph 13 *infra*. With regard to claim 8, due to the lack of clarity discussed *supra*, “the flow passage” claimed therein is interpreted to at least communicate with the passage of claim 1. In claim 20, the terminology “means” on line 3 is interpreted not to invoke 35 USC 112, sixth paragraph. Claim 20 is also a product by process claim, see MPEP 2113, i.e. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In *re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966.” The end product of claim 20 is considered to be a liquid-permeable non-woven fabric with a coat of super absorbent polymer. “Coat” is defined by the dictionary as “a layer of one substance covering another” (emphasis added). Claim 25 is interpreted to require at least one laminated absorber unit in addition to the unit of claim 22. This interpretation also applies to claim 29.

Claim Rejections - 35 USC § 102

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1-6, 8-15, 17-21, 30-31 and 35-36 are rejected under 35 U.S.C. 102(c) as being anticipated by Roe et al '786.

Claim 1: See the Claim Language Interpretation section supra, herein after also referred to as CLI, and '786 at Figures, esp. Figures 2, 3a-3b, and 5a-b, the abstract and the paragraph bridging cols. 1-2, the first full paragraph of col. 3, col. 4, lines 8-11, 19-34 and 51-65 and thereby, the references incorporated therein, col. 4, line 66-col. 5, line 34, col. 7, line 54-col. 8, line 13, col. 8, lines 26-52, esp. lines 42-45, i.e. "disposed in at least a portion of the crotch region 37 of the diaper 20" (emphasis added), i.e. '786 teaches an absorbent product 20 with a liquid-impermeable surface sheet positioned on the upper side, e.g., at least 54, a liquid-impermeable back sheet positioned under the surface sheet, e.g., 26, and an absorber, 28, containing super absorbent polymer, see col. 4, last full paragraph and thereby, by incorporation, e.g., '306 at, e.g., col. 7, first full paragraph and '673 at, e.g., col. 8, first full paragraph, to absorb discharged liquid, the absorber, 28, positioned between the surface sheet and the back sheet and "the discharged liquid", see CLI supra, being discharged on the surface sheet, see, e.g., col. 5, first full paragraph, wherein the surface sheet fully covers in a lateral direction, and partially or fully covers in a longitudinal direction, an upper surface of the absorber, see, e.g., Figures 5a-5b and col. 8, lines 26-52, esp. lines 42-45, i.e. "disposed in at least a portion of the

crotch region 37 of the diaper 20” (emphasis added) (i.e. includes more than 0% of crotch region to 100% of diaper), the longitudinal direction being equivalent to a direction from front to back of a wearer's body when the absorbent product is worn and being perpendicular to the lateral direction. Claim 1 further requires a flow passage be provided which functions or has the capability or property of allowing a part or all of “the discharged liquid”, see CLI, to flow off from the surface sheet toward the backsheet and to move to a boundary between the back sheet, and the absorber, in order to absorb the part or all of the “discharged liquid” by the absorber and the surface sheet and the absorber be positioned so that “the discharged liquid”, see CLI, is not directly absorbed by the upper surface of the absorber and is absorbed from lateral and lower surfaces of the absorber, i.e. a function, capability or property of the position of such structure. However, it is the Examiner's first position that the cited portions of '786, see, e.g., col. 8, lines 26-52, the Figures and col. 5, first full paragraph explicitly teach not only such structure, i.e. the flow passage and the position of the surface sheet and absorber, but also the function, capability or property of such as claimed. In any case, i.e. the Examiner's second position, since, at the very least, '786 teaches the claimed structure as best understood, see CLI, as well as movement of “the discharged liquid” on the surface of surface sheet 54 to the terminal end portions thereof before being absorbed by the absorber, there is sufficient factual basis for one to conclude that such same structure also inherently includes the function, capability or property of such structure as claimed (i.e. a flow passage, as best understood, is provided which functions or has the capability or property of allowing a part or all of “the discharged liquid”, see CLI, to flow off from the surface sheet toward the backsheet and to move to a boundary between the back sheet and the absorber, in order to absorb the part or all of the discharged liquid by the absorber, and

the surface sheet and the absorber are positioned so that “the discharged liquid”, see CLI, is not directly absorbed by the upper surface of the absorber and is absorbed from lateral and lower surfaces of the absorber). See MPEP 2112.01 and also *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980), i.e. the burden to show that this, i.e. the similar structure does not inherently include such function, capability or property, in fact, is not the case is shifted to Applicant.

Claim 2: The flow passage is provided “in” at least one of both front and back ends of the absorber, “on” both right and left ends of the absorber, and/or “in” the center of the absorber, i.e. see discussion of claim 1 and e.g. col. 8, lines 26-52 again.

Claim 3: The surface sheet is composed of a single-layer synthetic resin film, see, e.g., 54 in the Figures and col. 5, lines 26-29.

Claim 4: The surface sheet is composed of a laminate, i.e. layers which are bonded or united together, of a synthetic resin film and a non-woven fabric provided on the upper side surface of the synthetic resin film, see, e.g., Figures 2 and 5a, elements 52 and 54 and col. 5, second full paragraph. See also ‘786 at the col. 4, last full paragraph and thereby, by incorporation, ‘491 at col. 6, lines 18-64, and thereby, by incorporation, ‘246 at the Figures, e.g. element 40 is the film and 12 is the non-woven fabric, and ‘246 at col. 4, lines 28-37. It is noted that the claim does not require the fabric be provided directly adjacent the upper side surface.

Claims 5 and 35: This claim requires the synthetic resin film have concave and convex portions that constitute passage(s) for flow. See discussion of claims 1 and 4, e.g. element 40, *supra*.

Claim 6: The surface sheet is positioned in such a way that a portion of the surface of the upper side of the absorber is exposed, see, e.g., Figure 5a and col. 8, lines 26-52 of '786 and the discussion of claim 1 supra. It is noted that it is not claimed what the absorber is "exposed" to.

Claim 8: A liquid-permeable guide sheet with "the flow passage", as best understood, e.g. 52, the permeable portions thereof, is laminated to at least a portion of the surface of the upper side of the surface sheet, e.g., 54, see, e.g., the discussion of claims supra, and Figures 2 and 5b. See also discussion of '246 supra, i.e. guide sheet is 12 and/or 38 which is bonded or united, i.e. directly or indirectly, with surface sheet 40 which has passages for flow. It is noted the claim does not require direct lamination.

Claim 9: The guide sheet covers at least a portion of the lateral sides of the absorber directly or over the surface sheet, see discussion of claim 8, col. 4, lines 19-22 of '786 and Figure 2 of '246 adjacent the lines from 24.

Claim 10: The guide sheet, e.g., 52, 12, has concave and convex, i.e. embossments, that constitute passage(s) for flow and has apertures in some of or in all of the convex portions, see discussion of claims 1 and 4 supra and '246 at col. 4, lines 37, 52-54 and 39-40, i.e. embossments are portions of the film which are raised, i.e. arched up/bulges outward, i.e. "convex", compared to other portions therebetween which are arched in/ bulges inward, i.e. "concave", in comparison thereto. It is noted that the claim does not set forth the reference points for the directional language concave and convex. Also note Figures 9C-E of the instant application.

Claim 11: A skin-contactable sheet, e.g., 52 (Note such sheet also contacts the skin, see, e.g., col. 8, lines 26-52 and Figure 5a), composed of liquid-permeable nonwoven fabric is

laminated to, i.e. bonded or united with, at least a portion of the surface of the upper side of either the surface sheet 40 or the guide sheet 38, see discussion of claims 1, 4 and 8 supra. '246 teaches a skin-contactable sheet composed of liquid-permeable nonwoven fabric 12 laminated to at least a portion of the surface of the upper side of either the surface sheet 40 or the guide sheet 38, see discussion of claims 1 and 8 supra.

Claim 12: The back sheet is composed of a synthetic resin film, see '786 at col. 4, last full paragraph and thereby, by incorporation, e.g., '306 at col. 8, first full paragraph or '491 at col. 4, lines 58-col. 5, line 22.

Claim 13: The synthetic resin film that constitutes the back sheet has air-permeability, see discussion of claim 12 and '306 at col. 8, lines 16-19 and '491 at col. 5, lines 2-22.

Claim 14: The back sheet is composed of a laminate of a synthetic resin film and a nonwoven fabric provided on the surface of the lower side of the synthetic resin film, see discussion of claim 13, '491 at col. 5, lines 20-22 and thereby, by incorporation, '096 at , e.g., col. 9, line 47-col. 10, line 33.

Claim 15: Both the synthetic resin film and the nonwoven fabric that constitute the back sheet have air-permeability, see discussion of claim 13 supra and '096 at col. 10, lines 7-33.

Claim 17: The synthetic resin film that constitutes the back sheet has concave and convex portions, see discussion of claims 12-15 supra, e.g. apertured portions 80, see '096 at Figures 3-4, col. 7, lines 43-44, col. 10, lines 27-30, and col. 9, lines 24-28 and 41-43. The claim further requires such portions function as a liquid trap portion on the surface of the upper side of the backsheet, i.e. a function, capability or property of the structure of such portions. However, '096 teaches such claimed concave and convex portions on the upper surface of the backsheet.

Therefore, there is sufficient factual evidence for one to conclude that such same structure would also inherently include the same function as claimed, i.e. a liquid trap function, see MPEP 2112.01.

Claim 18: The absorber is composed of a mixture of super absorbent polymer and fluffy pulp wrapped with a liquid-permeable core-wrapping sheet, see discussion of '786 and '491 and thereby, by incorporation, '096 at col. 4, lines 52-53, 57 and 58-59 and col. 5, lines 5-29 and '402 at col. 6, lines 59-63 and col. 10, lines 13-17. Note also, e.g., '306 at col. 7, lines 1-49.

Claim 19: The absorber has two layers of liquid-permeable nonwoven fabrics and super absorbent polymer inserted in-between, see discussion of claim 18 as well as '423 at col. 13, lines 9-13 and '068 at the Figures and col. 14, lines 7-9.

Claim 20: The absorber is a liquid-permeable nonwoven fabric with a coat of super absorbent polymer, see Claim Language Interpretation section supra and the discussion of claim 19. It is noted that a continuous coating is not required.

Claim 21: The content of the super absorbent polymer in the absorber is 50 wt% or more, see discussion of claims 18-20 supra and '678 at the abstract.

Claim 30: The absorbent product includes a urine-disposing portion, e.g., 37, extending from a center to a front section, e.g. 36 or 38, (Note that the claim does not require the portion only so extend and/or define the extents of the portions and/or section relative to the overall extent of the product and/or "a center" be the transverse centerline) and a feces-disposing portion extending from the center to a back section, e.g., at least the other of 36 or 38, and the surface sheet 54 is provided only at the urine-disposing portion, see again the portions cited in the

discussion of claim 1, e.g. col. 8, lines 26-52, i.e. “at least a portion of the crotch region 37” and last sentence thereof, e.g., only the urine-disposing portion.

Claim 31: A liquid- impermeable back-flow preventing sheet is included inside and/or on the upper surface of the absorber, see discussion of claims supra, e.g. 246, element 12 and/or 40, and col. 1, lines 46-48 and col. 11, last full paragraph thereof, at least at the feces-disposing portion, see, e.g., Figures of ‘786 and ‘246, e.g., forms layer above absorber in at least the other of the section 36 or 38. It is noted that the claim does not require such only in the feces disposing portion.

Claim 36: A skin-contactable sheet composed of liquid-permeable nonwoven fabric is laminated to at least a portion of the surface of the upper side of either the surface sheet or the guide sheet, see discussion claims supra, e.g. of claim 11 supra esp. with regard to ‘246, i.e. elements 12, 40 and 38.

Claim Rejections - 35 USC § 103

14. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

15. Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roc et al ‘786.

Claim 32 requires the absorbent product have a re-wet amount of 5mL or less as measured according to a specific test and claim 33 requires such amount be 2mL or less. Claim 34 requires the absorber's absorbing capacity of sodium chloride solution of 0.9wt% be 300mL or more, when measured according to specific test, an average re-wet amount of 5mL or less,

with a standard deviation of 3mL or less when measured according to a specific test and a mean absorption time of 30 seconds or less with a standard deviation of 2 seconds or less when measured according to a specific test. While '786 at col. 4, last full paragraph, '096 at col. 6, lines 9-29 and thereby '246 at the portions cited above, see discussion of claims, e.g., 1-11 supra, and '096 at the sentence bridging cols. 4-5 teach strike through times, i.e. rates of absorption, and re-wet amounts, see, e.g. Tables 11-1V of '246, which are within the ranges as claimed, (note MPEP 2131.03 and 2144.05), and the absorption capacity be designed to be compatible with its intended use as well as the same structure and materials as discussed in claims 1-6, 8-15, 17-21, 30-31 and 35-36 supra, the prior art does not teach the specific absorbing capacity, average re-wet amount and standard deviation thereof, the mean absorption time and standard deviation thereof or the re-wet amount measured according to the claimed specific tests. However, since the general conditions are disclosed by the prior art, i.e. absorption capacity compatible with intended use, i.e. absorption over time of wear, low re-wet amounts without sacrificing strike through time, i.e. good absorption rate in combination with low rewet, it would not be inventive to discover the optimum or workable ranges (i.e. the claimed ranges of re-wet amount of 5mL or less as measured according to a specific test, more specifically 2mL or less, or the absorber's absorbing capacity of sodium chloride solution of 0.9wt% be 300mL or more, when measured according to specific test, an average re-wet amount of 5mL or less, with the standard deviation of 3mL or less when measured according to a specific test and the mean absorption time of 30 seconds or less, with the standard deviation of 2 seconds or less when measured according to a specific test), by routine experimentation if such are not already taught by '786, see In re Aller,

105 USPQ 233 (It is noted that it is well known or obvious that such properties are dependent on the specifics/type of materials used, i.e. a result effective variable).

16. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al '786 in view of McCormack et al '163 and Bewick-Sonntag et al '521.

Claim 16 requires not only that the synthetic resin film that constitutes the back sheet have concave and convex portions with apertures in some of or in all of the convex portions, and the nonwoven fabric that constitutes the back sheet be water-resistant as taught by the prior art, see the discussion of claims 12-17 supra, but also the non-woven be a laminate of two layers or more, i.e. layers which are bonded or united together, including one layer or more than one layer of a spunbond nonwoven fabric and one layer or more than one layers of meltblown nonwoven fabric which '786 does not clearly teach at col. 10, lines 13-19. However, see '163 at Figure 2 and col. 6, line 64-col. 7, line 2, col. 7, lines 55-60 and col. 8, lines 49-54 and '521 at col. 5, line 52-col. 6, line 48, i.e. interchangeability of a laminate as claimed for a layer of non-woven in a film/nonwoven laminate constituting a backsheet. To make the nonwoven of the prior art '786 the claimed spunbond/meltblown laminate instead, if not already, would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by '163 and '521.

17. Claims 22-29 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al '786 in view of Brownlee PCT '502 and Prager et al CA '465.

Claim 22: This claim require the product further comprise an absorbent product main body that can form an internal space to contain a wearer's objective region when worn, a housing for an absorber unit adjacent to the absorbent product main body (note, e.g., the paragraph bridging pages 43-44 and page 44, first full paragraph of the instant specification and elements

52, 54 in the instant Figure 15A-B, i.e. the housing can be constituted by the absorbent body (main body), continued to the internal space, wherein the housing contains the back sheet on an inner wall thereof and an absorber unit structured by combining at least the surface sheet and the absorber which absorber unit is removably received by the housing for the absorber unit. In other words, as best understood, an absorbent product shell/holder and absorbent product insert/liner. See col. 3, lines 6-9 again, i.e. '786 contemplates application to absorbent inserts/liners and diaper holder/shells. However the specifics of such are not disclosed by '786. Also see '502 at the Figures and page 3, line 26-page 4, line 5, the abstract, page 1, lines 7-30, page 2, line 21-page 3, line 12, page 4, line 9-page 7, last line and '465 at Figures, the abstract, page 1, lines 8-12, page 2, lines 11-18, page 4, lines 9-12 and 21-22, page 5, line 20-page 6, line 6, the paragraph bridging pages 7-8, page 9, first full paragraph, and page 10, lines 16-30. Therefore to employ an absorbent product shell/holder and absorbent product insert/liner application, such as, for example, as taught by '502 and '465 as the wearable article of '786 would be obvious to one of ordinary skill in the art in view of the recognition that such are absorbent inserts/liners and diaper holder/shells and the desire of '786 to be applicable to such. In so doing, the prior art contemplates an absorbent product main body that can form an internal space to contain a wearer's objective region when worn, e.g. at least a portion of a liquid impervious backsheet, see, e.g., 52 in '502, 26 in '786 and 12 in '465, a housing for an absorber unit adjacent to the absorbent product main body, e.g., between 62 and 64 in '502 and 34 in '465, continued to the internal space, wherein the housing contains the back sheet, i.e. an impermeable portion, on an inner wall thereof and an absorber unit, 28, 24, 50 of '786, 70 of '502, 60a-60c of '465 structured by combining at least the surface sheet and the absorber, see discussion of claims

supra and cited portions of '768, 502 and '465, which absorber unit is removably received by the housing for the absorber unit.

Claim 24: See discussion of claims 22 and 11 and 36 supra, i.e. the prior art contemplates the liquid-permeable skin-contactable sheet be included at least in a portion between the internal space of the absorbent product main body, e.g. the space defined between the main body/product and the body, and the housing for the absorber unit, see discussion of claim 22, e.g. between the wearer and the housing, e.g. the back sheet, as discussed supra.

Claim 25: See discussion of claim 22 supra, i.e. the prior art contemplates the housing for the absorber unit including a plurality of laminated absorber units, i.e. absorber units which are bonded or united together, rather than a single unit, see cited portions of '465 supra, e.g., one or more of 60a-60c.

Claims 23, 26-29 and 37-39: See discussion of the claims supra, esp. claims 22, 24-25, 8-1135-36.

Response to Arguments

18. Applicant's remarks have been carefully considered but are deemed either moot in that the issue discussed has not been reraised or deemed not persuasive for the reasons set forth supra. Note also the Interview Summary form of 7-7-09. Applicant's attention is also reinvited to '849, '379 and '054 cited in the last Office action and paragraph 14 of the last Office action.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 1, 22, 25, 26, 29, 32, 34, and 38.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

March 8, 2010